Tentative Rulings for November 5, 2026
Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, the remote appearance will be conducted through Zoom. Please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19.)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(20) **Tentative Ruling**

Re: ***Bowerman v. Coalinga Regional Medical Center-Rural Health Clinic, et al.***
Superior Court Case No. 25CECG01547

Hearing Date: November 5, 2026 (Dept. 403)

Motion: Demurrer to First Amended Complaint by Defendants Coalinga Regional Medical Center and Coalinga Medical Center, LLC

Motion to Strike First Amended Complaint by Defendants Coalinga Regional Medical Center and Coalinga Medical Center, LLC

Tentative Ruling:

To sustain demurrers to the fifth and eighth causes of action, with plaintiff granted 10 days' leave to file a second amended complaint; to overrule demurrers to the first, second, third, fourth, sixth, seventh causes of action. (Code Civ. Proc., § 430.10, subd. (e).) The time in which the complaint may be amended will run from service of the order by the clerk. All new allegations shall be in **boldface** type.

To grant the motion to strike the punitive damages and attorney fees allegations and prayers at FAC ¶ 234, and Prayers c, d and e, without prejudice to plaintiff filing a motion under Code of Civil Procedure section 425.13. (Code Civ. Proc., § 436, subd. (b).) Outside of making a motion under section 425.13, the motion to strike is granted without leave to amend.

Explanation:

This is a medical malpractice / professional negligence action against two healthcare facilities, Coalinga Regional Medical Center and Coalinga Medical Center, LLC (collectively referred to as "Defendants" for purposes of this motion), and various doctors, nurses and other medical personnel, for negligence in treating plaintiff Heidi Bowerman's ear discomfort.

On 8/4/2025, plaintiff filed the operative First Amended Complaint alleging (1) medical malpractice, (2) medical negligence, (3) negligence, (4) deliberate indifference to medical needs, (5) intentional infliction of emotional distress, (6) medical negligence-patient abandonment, (7) retaliation, and (8) battery. Plaintiff alleges that the defendant's acts or omissions resulted in Plaintiff's injury of tinnitus. Plaintiff also alleged that defendants retaliated by terminating her care because she filed a complaint or grievance.

Defendants now demur to all causes of action and move to strike the allegations and prayers seeking punitive damages and attorney fees.

Initially, the court notes that plaintiff opposes both motions, and moves to strike the demurrer, on the same ground that was litigated with regards to the setting aside of the default – Defendant's failure to timely respond to the FAC. The court's 4/16/26 order granting Coalinga Regional Medical Center's ("CRMC") motion to set aside default ordered CRMC to "file a responsive pleading within five days of service of the order by the clerk." The demurrer and motion to strike were promptly filed the next day, and plaintiff's motion for reconsideration was denied. Timeliness of the pleadings is not an issue up for dispute at this point. The court will proceed to rule on the motions on the merits.

Demurrer

First - Third Causes of Action

Defendants only contend that the first, second and third causes of action are barred by the statute of limitations.

"A demurrer on the ground of the bar of the statute of limitations lies where it "appear[s] clearly and affirmatively that, upon the face of the complaint, the right of action is necessarily barred." (*Valvo v. Univ. of Southern California* (1977) 67 Cal.App.3d 887, 895; *Mangini v. Aerojet-General Corp.* (1991) 230 Cal.App.3d 1125, 1155.) Where a complaint discloses on its face that the statute of limitations has run on the cause of action stated in the complaint, it fails to state facts sufficient to constitute a cause of action. (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 833, rehg. denied, review denied.)

A personal injury action brought against a health care provider based upon professional negligence must be commenced either within three years after the date of the injury, or one year after plaintiff discovers, or through reasonable diligence should have discovered, the injury, whichever occurs first. (Code Civ. Proc., § 340.5; see also, *Bellamy v. Appellate Department* (1996) 50 Cal.App.4th 797, 802.) Defendants are medical providers, which encompasses "any clinic … or health facility." (Code Civ. Proc., § 340.5, subd. (1).)

"The statute of limitations that applies to an action is governed by the gravamen of the complaint, not the cause of action pled." (*Professional Collection Consultants v. Lauron* (2017) 8 Cal.App.5th 958, 967-968, quoting *City of Vista v. Robert Thomas Securities, Inc.* (2000) 84 Cal.App.4th 882, 889.) As a result, "[i]t is the substance of the action, rather than the form of the pleading or the labels employed, that governs." (*Lauron*, *supra*, 8 Cal.App.5th at p. 968, citing *Giffin v. United Transportation Union* (1987) 190 Cal.App.3d 1359, 1362.) Thus, the third cause of action for general negligence, premised on professional negligence, is governed by the same limitations period.

The demurrer is premised on the allegations that the first negligent act, the ear lavage, was on 3/22/2024. (FAC ¶ 21.) The follow up appointment was on 3/27/2024, when the curette treatment occurred along with other ear lavages. (FAC ¶ 30.) On 3/29/2024, patient returned complaining of ear ringing, difficulty hearing, and left ear fullness. (FAC ¶ 37.) Defendants contend that these specific dates are when plaintiff should have discovered through reasonable diligence the injury she alleges, and she

would have been required to file her action by 3/29/2025. The action was filed on 4/8/2025.

Plaintiff relies on *Garlock v. Cole* (1962) 199 Cal.App.2d 11, 15, which stated:

> The one-year statute of limitations (Code Civ. Proc., § 340, subd. 3) governs the action for malpractice. (*Stafford v. Shultz,* 42 Cal.2d 767, 775 [270 P.2d 1].) This is true even where, as here, the plaintiff alleges a cause of action for deceit in defendant's misrepresenting or withholding the nature and extent of the injury. (*Tell v. Taylor,* 191 Cal.App.2d 266, 271 [12 Cal.Rptr. 648].) However, the statute does not commence to run until the plaintiff discovers his injury *due to defendant's wrongful act* or through the exercise of reasonable diligence should have discovered it. (*Huysman v. Kirsch,* 6 Cal.2d 302 [57 P.2d 908].) Actual or constructive notice not only of the condition but of its negligent cause and deleterious effect is implicit in this definition. Moreover, **the statute does not ordinarily commence to run while the physician-patient relationship continues** since "exercise of reasonable diligence" does not usually require the patient to doubt and challenge the doctor in whom complete confidence is traditionally reposed. (*Stafford v. Shultz, supra*; *Mock v. Santa Monica Hospital,* 187 Cal.App.2d 57, 63-64 [9 Cal.Rptr. 555]; *Hundley v. St. Francis Hospital,* 161 Cal.App.2d 800, 806 [327 P.2d 131]; *Myers v. Stevenson,* 125 Cal.App.2d 399, 402 [270 P.2d 885]; *Costa v. Regents of University of Calif.,* 116 Cal.App.2d 445 [254 P.2d 85].)

(Emphasis added.)

Here, the FAC alleges a course of treatment that is much more extensive than the first few visits and treatments received by plaintiff in March of 2024. Plaintiff alleges a continuous course of treatment from 3/22 through about 10/23/2024, and continuing well into 2025. (See FAC ¶¶ 21-142.) The moving papers ignore these allegations. The FAC clearly alleges that the physician-patient relationship with Defendants continued well beyond March 29, 2024. It is too simple to point out that procedures were performed over one year prior to filing the Complaint, without addressing the totality of the circumstances surrounding plaintiff's treatment by defendants, and the continuing physician-patient relationship well beyond the first treatments. When the limitations period begins to run on a medical malpractice claim is a highly factual question. The allegations of the FAC do indicate that plaintiff continued receiving care from defendants well beyond April of 2024, indicating her continued confidence or at least hope that they would resolve her medical issue. It is not apparent from the face of the FAC that the limitations period for the medical malpractice claims expired prior to the filing of the Complaint. Accordingly, the demurrers to the first, second and third causes of action are overruled.

Fourth Cause of Action

The fourth cause of action is for deliberate indifferent to medical needs. Defendants contend this cause of action should be dismissed because 42 U.S.C. section 1983 applies to deprivation of medical care to a *prisoner*. However, the FAC never references section 1983 or gives any indication that the cause of action is brought pursuant to that statute, or is brought as a constitutional Eighth Amendment claim. As

such, the demurring papers address the merits of a claim that plaintiff is not bringing, As a result, the demurrer to the fourth cause of action is overruled.

Fifth Cause of Action

The fifth cause of action is for intentional infliction of emotional distress ("IIED"). The elements for the cause of action are: " '(1) outrageous conduct by the defendant, (2) intention to cause or reckless disregard of the probability of causing emotional distress, (3) severe emotional suffering and (4) actual and proximate causation of the emotional distress.' " (*Agarwal v. Johnson* (1979) 25 Cal.3d 932, 946.) "Outrageous conduct" denotes conduct which is so extreme as to exceed all bounds of decency and which is to be regarded as "atrocious and utterly intolerable in a civilized community." (*Bartling* v. *Glendale Adventist Medical Center* (1986) 184 Cal.App.3d 961, 969.)

As Defendants point out, IIED claims are essentially medical malpractice claims when based on facts underlying an issue with professional services. (See *Central Pathology Service Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181, 192; *Larson v. UHS of Rancho Springs, Inc.* (2014) 230 Cal.App.4th 336, 347.)

Here the IIED claim is based on alleged failure to provide considerate, respectful and competent care, and the eventual termination of care to plaintiff. (See FAC ¶¶ 195-199.) Plaintiff fails to address the cause of action in her response to the demurrer. The demurrer should be sustained with leave to amend, as the factual allegations do not allege conduct rising to the level of outrageous conduct. Plaintiff is simply attempting to transform ordinary professional negligence into an intentional tort.

Sixth Cause of Action

This cause of action is for medical negligence – patient abandonment.

A plaintiff must prove that a defendant withdrew from plaintiff's care and treatment and that the defendant did not provide sufficient notice for plaintiff to obtain another medical practitioner. (CACI No. 509.) "[A] physician who abandons a patient may do so 'only … after due notice, and an ample opportunity afforded to secure the presence of other medical attendance.'" (*Payton v. Weaver* (1982) 131 Cal.App.3d 38, 45, internal citations omitted.)

The cause of action is based on allegations that defendants failed to inform and relay to plaintiff results of specialized exams and lab results. (FAC ¶ 210.) On 5/15/2025, plaintiff discovered a letter from Dr. Paul Griffin *on behalf of CRMC Rural Health* Clinic that termination of care occurred over seven months ago. (FAC ¶ 211.) The demurrer merely argues that the allegations are nonspecific, in referencing "each and every Defendant." But they ignore the allegation that the notice was given on behalf of CRMC Rural Health Clinic. Accordingly, the demurrer should be overruled.

Seventh Cause of Action

The seventh cause of action is for retaliation. A health facility shall not retaliate against a patient … because that person has presented a grievance or complaint.

(Health & Saf. Code, §1278.5, subd. (b)(1).) "Any type of discriminatory treatment of a patient by whom, or upon whose behalf, a grievance or complaint has been submitted, directly or indirectly, to a governmental entity or received by a health facility administrator within 180 days of the filing of the grievance or complaint, shall raise a rebuttable presumption that the action was taken by the health facility in retaliation for the filing of the grievance or complaint." (Health & Saf. Code, §1278.5, subd. 1278.5, subd. (c).)

Plaintiff alleges that her care was terminated in retaliation for plaintiff's complaint regarding a botched medical procedure, which termination was without timely notice or referral to a replacement Primary Health Care Provider in violation of Business and Professions Code § 2234. (FAC ¶¶ 222-225.)

The demurrer is on the ground that the FAC fails to allege with specificity any allegations toward Coalinga Regional Medical Center.

However, as noted above, the FAC alleges that the termination letter was sent on behalf of "*CRMC Rural Health* Clinic" (FAC ¶ 211), and that "Coalinga Regional Medical Center (CRMC) was the entity operating, managing, supervising, and/or controlling the facility known as the Rural Health Clinic (RHC) …" (FAC ¶ 4). Thus, there is allegation that the retaliation was by Coalinga Regional Medical Center. The demurrer should be overruled.

Eighth Cause of Action

The eighth cause of action is for medical battery is premised on the contention that "Defendants caused Plaintiff's injury of tinnitus by improper use of an ear lavage, thereby committing battery on the person of Plaintiff." (FAC ¶ 230.)

Battery is defined as "an intentional and offensive touching of a person who has not consented to the touching." (*Conte v. Girard Orthopaedic Surgeons Medical Group, Inc.* (2003) 107 Cal.App.4th 1260, 1266.) "As a general rule, one who consents to a touching cannot recover in an action for battery." (Rest.2d Torts, § 892A.) When the patient consents to certain treatment and the doctor performs the treatment but an undisclosed inherent complication with a low probability occurs, no intentional deviation from the consent given appears; rather, the doctor in obtaining consent may have failed to meet his due care duty to disclose pertinent information. In that situation the action should be pleaded in negligence. (*Cobbs v. Grant* (1972) 8 Cal.3d 229, 240-241.)

Here, plaintiff does not allege facts showing that defendants performed a procedure other than that consented to. She does allege failure to obtain informed consent, but this does not transform professional negligence into a battery. Accordingly, the demurrer should be sustained with leave to amend.

Motion to Strike

The FAC includes prayers for punitive damages and recovery of plaintiff's attorney fees.

Defendants are clearly health care providers, and plaintiff did not comply with section 425.13 before including the punitive damages allegations in her FAC. While plaintiff includes tort causes of action, all of the claims clearly arise out of professional negligence, which occurs "if the injury that is the basis for the claim was caused by conduct that was directly related to the rendition of professional services." (*Divino Plastic Surgery, Inc. v. Superior Court* (2022) 78 Cal.App.5th 972, 984, quoting *Central Pathology Service Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181, 192.) Plaintiff's opposition ignores this issue. The punitive and exemplary damages allegations and prayers should be stricken.

Regarding the prayer for attorney fees, each party to a lawsuit must pay his or her own attorney fees except where a statute or contract provides otherwise. (*Dell Merk, Inc. v. Franzia* (2005) 132 Cal.App.4th 443, 450.) In order for plaintiffs to adequately plead they are entitled to attorney's fees they are required to expressly plead the statute or contract entitling them to attorney's fees. (See Wiley v. Rhodes (1990) 223 Cal. App. 3d 1470, 1474.) Plaintiff alleges no contractual or statutory basis for recovering attorney fees. Plaintiff's opposition to the motion to strike does not address this issue either. The prayer should be stricken.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: SMC on November 4, 2026 .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Marsella v. Ky, D.O., et al.***
Superior Court Case No. 24CECG01688

Hearing Date: November 5, 2026 (Dept. 403)

Motion: by Defendants for Summary Judgment, or in the Alternative for Summary Adjudication

Tentative Ruling:

To deny. (Code Civ. Proc., § 437c.)

Explanation:

Medical Malpractice

"Medical providers must exercise that degree of skill, knowledge, and care ordinarily possessed and exercised by members of their profession under similar circumstances. [Citation.]" (*Powell v. Kleinman* (2007) 151 Cal.App.4th 112, 122.) " '[I]n any medical malpractice action, the plaintiff must establish: "(1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence." [Citation.]' " (*Hanson v. Grode* (1999) 76 Cal.App.4th 601, 606, citations omitted.)

Burden on Summary Judgment and Expert Evidence Requirements

Declarations by expert witnesses are generally required when expert witness testimony would be required at trial (such as on the issue of the standard of care in a professional malpractice case). (See e.g. *Kelley v. Trunk* (1998) 66 Cal.App.4th 519, 523.) A declaration stating an expert's opinion is admissible to support or defeat a summary judgment motion if the requirements for admissibility are established in the same manner as if the declarant was testifying at trial. An expert opinion based on speculation or conjecture is inadmissible. (*In re Lockheed Litig. Cases* (2004) 115 Cal.App.4th 558, 564.)

The declaration must contain facts showing the expert's qualifications (competency) to express the opinion in question; e.g., facts showing the declarant has the training, experience or necessary skill to render an opinion on the particular matters in controversy. (*Salasquevara v. Wyeth Labs., Inc.* (1990) 222 Cal.App.3d 379, 387.) It must also include facts showing:

--the matters relied upon by the expert in forming the opinion;
--the declarant's opinion rests on matters of a type reasonably relied upon by experts; and

--the factual basis for the opinion.

(*Kelley*, *supra*, 66 Cal.App.4th at 524.)

It was held in *Munro v. Regents of the University of California* (1989) 215 Cal.App.3d 977, that

> "California courts have incorporated the expert evidence requirement into their standard for summary judgment in medical malpractice cases. When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence."

(*Munro*, *supra*, 215 Cal.App.3d at pp. 984-985.)

Where the moving party produces competent expert opinion declarations showing that there is no triable issue of fact on an essential element of the opposing party's claim (e.g. that a medical defendant's treatment fell within the applicable standard of care), the opposing party's burden is to produce competent expert opinion declarations to the contrary. (*Ochoa v. Pacific Gas & Elec. Co.* (1998) 61 Cal.App.4th 1480, 1487.)

To establish that a physician's care was negligent, a plaintiff must provide expert testimony establishing that the treatment fell below the applicable standard, unless the medical process at issue is matter of common knowledge and thus susceptible to comprehension by a lay juror. (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 1001.)

In determining whether plaintiff has met her burden of production, the court must evaluate the plaintiff's evidence independently. That is, the court may not weigh the plaintiff's evidence or inferences against the defendant's, as if the court were sitting as a trier of fact. If the plaintiff meets her burden, then the court must deny summary judgment, even if defendants have presented conflicting evidence. If the plaintiff meets her burden, a reasonable trier of fact could find for plaintiff and a triable issue of fact does exist for the jury to consider. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 856-857.)

In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. Any doubts as to whether a triable issue of material fact exist are to be resolved in favor of the party opposing summary judgment. (*Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562.)

"In a medical negligence action a defendant doctor is not entitled to obtain summary judgment based on a conclusory expert declaration which states the opinion that no malpractice has occurred, but does not explain the basis for the opinion." (*Kelley v. Trunk* (1998) 66 Cal.App.4th 519, 521.) "[T]he standard [of care] is not satisfied by

laconic expert declarations which provide only an ultimate opinion, unsupported by reasoned explanation." (*Id.* at pp. 524–525.)

Defendants Paul Ky, D.O. dba Advanced Pain Solutions and Ky Advanced Surgical Center Inc. (collectively, "defendants") rely on the declaration of expert Marcel Fraix, D.O. Based on his knowledge, education, training, professional experience and review of the relevant materials in this case, Dr. Fraix concludes that defendants complied with the applicable standard of care with respect to their treatment and care of plaintiff, and no act or omission of defendants was a substantial factor in causing harm to her. (Fraix Decl., ¶ 7.)

Dr. Fraix explains that Dr. Ky's April 26, 2023 Procedure Report notes that plaintiff tolerated the procedure well and without complications. (Fraix Decl., ¶ 7b.) Dr. Fraix also notes that plaintiff has had pre-existing neck and upper-back pain both before and after the April 26, 2023 procedure. (*Id.* at ¶¶ 7c, 7e.) Dr. Fraix also indicates that nothing in the medical records specifically connects the cervical syrinx as being caused by Dr. Ky's treatment of plaintiff. (*Id.* at ¶¶ 7c-d.) Lastly, Dr. Fraix notes that a comparison of her physical examinations performed before and after the procedure reveals no significant deficits and her records reflect no lost function in her arm. He acknowledges that the imagining revealed a positive MRI, but that finding did not correlate with her physical examination findings. He also states that she has no significant pain. (*Id.* at 7e.)

Plaintiff challenges Dr. Fraix's opinion on the breach of standard of care and causation as conclusory. Here, the crucial issues are: Did Dr. Ky's performance of cervical injections cause or worsen plaintiff's cervical syrinx? Did plaintiff experience pain immediately after the injections? Would the kind of pain plaintiff allegedly suffered be expected immediately following the injections? Is pain immediately following cervical injections indicative of injury?

Notably, Dr. Fraix relies on defendants' April 26, 2023 Procedure Report to form his opinion, which states that plaintiff tolerated the procedure well and without complications. (SSMF No. 4.) Although plaintiff does not dispute that this is recorded in the April 26, 2023 Procedure Report, plaintiff disputes the truth of this fact and indicates that she was in severe pain with numbness and burning down her entire left arm. (*Ibid*; Plaintiff's Depo, pp. 63-65.) Although Dr. Fraix forms the basis for his opinion in part at least due to plaintiff's lack of significant pain, this fact is properly in dispute. Moreover, Dr. Fraix fails to address plaintiff's alleged immediate severe pain and numbness and whether these symptoms would be expected immediately following the kind of cervical injections Dr. Ky performed.

Therefore, defendants have not met their burden in establishing the absence of an issue of material fact as to the standard of care and causation. The motion is denied.[1]

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order

[1] The court does not rule on the evidentiary objections, as they were not dispositive to the motion. (Code Civ. Proc., § 437c subd. (q).)

adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: SMC on November 4, 2026.
(Judge's initials) (Date)